

**Edwin Bowles, d/b/a Kenco Electric & Signs and J. R. Hall, d/b/a J. R. Hall Electric, Single or Joint Employers and International Brotherhood of Electrical Workers, Local Union No. 995, AFL-CIO.** Case 15-CA-14219

April 5, 2001

SUPPLEMENTAL DECISION AND ORDER  
BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND WALSH

On July 17, 1998, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> directing the Respondents, Edwin Bowles, d/b/a Kenco Electric & Signs (Bowles) and J. R. Hall, d/b/a J. R. Hall Electric (Hall), *inter alia*, to make whole certain discriminatees for loss of earnings and other benefits resulting from the Respondent's discharge of employees, refusal to consider for hire or to hire certain job applicants, and failure to reinstate certain unfair labor practice strikers, all in violation of the National Labor Relations Act. On November 18, 1998, the United States Court of Appeals for the Fifth Circuit issued its judgment enforcing the Board's Order in full.<sup>2</sup>

A controversy having arisen over the amount of backpay due some of the discriminatees, on October 30, 1998, the Regional Director for Region 15 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, Respondent Bowles failed to file an answer in a timely manner.

On February 20, 2001, the Acting General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. In the motion, the Acting General Counsel alleges that by letter dated November 30, 1998, the Region advised Respondent Bowles that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 10, 1998, summary judgment would be sought. The Acting General Counsel further alleges that the Region sent another letter to Respondent Bowles, dated December 11, 1998, which extended the time for the answer to be filed to December 21, 1998. The motion also asserts that by letter dated December 18, 1998, the Region advised Respondent Bowles of the unfulfilled requirements of the court's judgment. The Acting General Counsel states that on December 21, 1998, the Region received a docu-

ment purporting to be a response to the compliance specification.

According to the Acting General Counsel's motion, on February 10, 1999, the Acting General Counsel and Respondent Hall entered into a settlement stipulation providing that in full and complete satisfaction of Hall's backpay obligations, Hall would pay a total of \$5000 over a 12-month period beginning February 15, 1999. Hall remitted the final payment due under that agreement in January 2000.

In addition, the Acting General Counsel alleges that by letter dated February 26, 1999, Respondent Bowles was advised of the settlement reached with Respondent Hall and was solicited to make an offer of backpay and a proposed plan of payment. In the alternative, based on Bowles' claim of inability to pay made in a previous telephone conversation with the Region's compliance officer on January 22, 1999, Bowles was asked to provide information regarding Kenco Electric & Signs' revenues sufficient to allow the Region to evaluate Kenco's assets. This letter also informed Respondent Bowles that absent his cooperation in providing evidence to support his claim of inability to pay by March 12, 1999, the Region was prepared to issue an investigative subpoena or take other action necessary to facilitate Kenco's (and therefore Bowles') satisfaction of its backpay liability.

The Acting General Counsel's motion further alleges that by letter dated October 20, 2000, sent to Respondent Bowles' last known address, the Region advised the Respondent that the response it previously submitted in December 1998 did not constitute an adequate answer under Section 102.56 of the Board's Rules and Regulations. This letter also extended the date for filing an answer that complied with the Board's Rules and Regulations to November 3, 2000.

In response to this letter, Charlotte Williamson, acting on behalf of Respondent Bowles, contacted the compliance officer and requested clarification of the Region's letter, including a copy of the compliance specification and notice of hearing. The compliance officer furnished the requested information by facsimile on November 3, 2000, and extended the time for filing an answer to November 9, 2000. The information provided by the compliance officer drew specific attention to the instructions on how to draft an answer contained in Section 102.56 of the Rules and Regulations, which was set forth in the compliance specification. Respondent Bowles, however, subsequently did not file any response or answer with the Region or the Board.

On February 23, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show

<sup>1</sup> 325 NLRB 1118.

<sup>2</sup> 98-60553.

Cause why the Acting General Counsel's motion should not be granted. Respondent Bowles again filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56 further states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We agree with the Acting General Counsel that the document submitted by Respondent Bowles in December 1998 does not satisfy the requirements of Section 102.56 of the Board's Rules and Regulations, and therefore does not constitute an adequate answer to the compliance specification. This document does not state that it was filed in response to the compliance specification, but instead merely sets forth the words "deny," or "without knowledge," or "admit" next to numbers from 1 to 21 (including 1(A)-(D), 2(A)-(D), 3(A)-(B), and 4(A)-(B)). These numbers do not correlate with the paragraphs of the compliance specification, which has paragraphs numbered 1, 2(a)-(c), 3-5, 6(a)-(e), 7(a)-(f), 8(a)-(e), 9(a)-(e), and 10. Rather, an examination of the document filed by Respondent Bowles with the Region on December 21, 1998, reveals that its numbered paragraphs correspond to the paragraphs of the complaint in the underlying unfair labor practice case. Thus, this document appears to be a purported answer to the allegations of the unfair labor practice complaint. Those allegations, however, were disposed of by the Board's July 17, 1998 decision, enforced by the Fifth Circuit, which found that Respondent Bowles had failed to file a timely answer to the complaint and had violated the Act as alleged. Our conclusion that the December 1998 document filed by Respondent Bowles addresses the complaint and not the compliance specification is also buttressed by the fact that it ends with three brief statements that, in context, reasonably may be read as responses to allegations in the complaint.

Accordingly, there is no reasonable basis for construing the December 1998 document as a timely answer to the compliance specification. We find, therefore, that the December 1998 submission falls far short of even purporting to be an answer to the compliance specification.

Further, were we to consider the December 1998 document to be a timely answer to the compliance specification, we would find that it does not meet the requirement of Section 102.56 of the Board's Rules and Regulations, and is not responsive to the allegations of the specification in any way that raises an issue warranting a hearing.<sup>3</sup>

Thus, Respondent Bowles, despite having been advised of the filing requirements on several occasions, has failed to file an answer to the compliance specification, and has failed to offer an explanation for its failure to do so. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant

<sup>3</sup> See, e.g., *Carlow's Ltd.*, 315 NLRB 27 (1994); *Pallazola Electric*, 312 NLRB 569 (1993).

the Acting General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of said amounts to the discriminatees, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Edwin Bowles d/b/a Kenco Electric & Signs, Alexandria, Louisiana, its officers, agents, successors, and assigns, shall make whole the individuals

named below, by paying them the amounts following their names, plus interest on the backpay as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Roland Goetzman	\$4829.63
Cecil Jackson	4179.63
Taylor Webb	1609.88
Cliff Zylks	<u>4611.00</u>
TOTAL	\$15,230.14